IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14091 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ STATE ROAD TRANSPORT CORPN

Versus

CHANDABEN BABULAL BHANGI

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Appearance:

1. Special Civil Application No. 14091 of 1993

MR HARDIK C RAWAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/02/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner corporation. Notice of rule issued by this Court has been served upon the respondent workman but the

respondent workman has not appeared before this court either in person or through her advocate. This being the matter of the year 1993, same has, therefore, been taken up for hearing in absence of the respondent.

2. In the present petition, the petitioner has challenged the award made by the labour court concerned in Reference No. 146 of 1988 dated 29th June, 1993 wherein the labour court has granted reinstatement in favour of the respondent workman as part time sweeper without back wages for the intervening period. The petition was admitted by this court by issuing rule thereon by order dated 22nd December, 1993 and it was made returnable on 21st February, 1994 and ad.interim relief in terms of para 6(b) has been granted which has subsequently been confirmed by order dated 15.3.1994. The industrial dispute was raised by the respondent workman relating to termination of her service which was referred to the labour court concerned for adjudication. Therefore, the question is that whether the services of the respondent have been terminated by the petitioner corporation or not and whether there is relationship of employer and employee between the petitioner and workman or not. The petitioner corporation has raised contention before the labour court that she was not appointed by the corporation; no appointment order was given in her favour and she voluntarily worked as Safai Kamdar in the lavatory of Chanasma Depot but there was no appointment order issued by the corporation in her favour. Before the labour court, the respondent workman was examined at Exh. 9 and, thereafter, the petitioner has examined one Shri I.K. Patel and Shri S.M. Baria at Exh. 13 and 14. In her cross examination, the respondent workman has admitted that the corporation has not issued any order of appointment in her favour and she has not applied for job in the corporation. However, according to her statement, the Depot Manager Shri Baria has appointed her but there was no any order appointment issued in her favour. These are the clear admissions made by the respondent workman in her evidence before the labour court. Similarly, the Depot Manager Shri S.M. Baraiya has deposed before the labour court at Exh. 13 that there was no appointment order issued in favour of the respondent workman and likewise, there was also no termination order issued by the Corporation. The respondent workman has mentioned the fact that her husband was working with the corporation and he has resigned from service and therefore, one recommendation was made by the Traffic Inspector but thereafter, no further action has been taken by the corporation. However, the labour court has examined the merits as if the respondent workman has been

appointed by the corporation and her service has been terminated illegally. As a matter of fact, looking to the evidence of the respondent workman and the witness for the corporation, the relationship of employer and employee has not been established between the petitioner corporation and the respondent workman. The labour court has not properly appreciated this material aspect. The labour court has come to the conclusion that because her husband was working as Hamal in the Chanasma control point and because of the sickness of her husband, her husband tendered resignation and, therefore, the petitioner corporation has to employ the respondent workman. This aspect is beyond the scope of the reference. The labour court has also come to the conclusion that the respondent was voluntarily working in the lavatory of Chanasma Control Point and no salary was paid by the corporation. Considering all these aspects of the matter, according to my opinion, since there was no relationship of employer and employee between the petitioner and the respondent workman, the labour court ought not to have granted any relief in favour of the respondent workman. Merely because her husband was working in the petitioner corporation and has resigned in view of the sickness, that does not mean that she is entitled for job as a matter of right. The petitioner corporation is a public body and there is procedure for recruitment and, therefore, according to my opinion the labour court has passed the award without jurisdiction and has gone beyond the scope of reference and, therefore, it is the basic error committed by the labour court which would require interference while exercising the powers under Article 226 and/or 227 of the Constitution of India since the labour court has committed procedural irregularity and jurisdictional error in making the award in favour of the respondent workman.

In the result, this petition is allowed. The award made by the labour court in Reference No. 146 of 1988 dated 29th June, 1983 is hereby quashed and set aside. Reference No. 146 of 1988 is hereby ordered to be dismissed. There shall be no order as to costs.

20.2.2002. (H.K. Rathod,J.)
Vyas